



**TABLE OF CONTENTS**

1.	Identification Page.....	1
2.	Table of Contents .....	2
3.	Real Party in Interest .....	3
4.	Related Appeals and Interferences .....	4
5.	Status of Claims .....	5
6.	Status of Amendments .....	6
7.	Summary of Claimed Subject Matter .....	7
8.	Grounds of Rejection to be Reviewed on Appeal .....	11
9.	Arguments .....	12
10.	Conclusion .....	14
11.	Claims Appendix .....	15
12.	Evidence Appendix .....	18
13.	Related Proceedings Appendix .....	19

### **Real Party in Interest**

The present application has been assigned to International Business Machines Corporation, Armonk, New York.

### **Related Appeals and Interferences**

Applicant asserts that no other appeals or interferences are known to the Applicant, the Applicant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **Status of Claims**

Claims 3, 7-11, 24 and 27 are pending in the application. Claims 1-47 were originally presented in the application. Claims 1-2, 4-6, 12-23, 25-26, and 28-47 have been canceled without prejudice. Claims 3, 7-11, 24 and 27 stand finally rejected as discussed below. The final rejections of claims 3, 7-11, 24 and 27 are appealed. The pending claims are shown in the attached Claims Appendix.

### **Status of Amendments**

All claim amendments have been entered by the Examiner. No amendments to the claims were proposed after the final rejection.

## Summary of Claimed Subject Matter

### A. CLAIM 3 - INDEPENDENT

One embodiment of the invention (see, e.g., Claim 3) provides a method for providing viewership information to a plurality of television viewers. The method includes collecting viewership data of a plurality of viewers. See, e.g., Page 2, Paragraph 0006; Page 6, Paragraph 0026; Figure 1, Items 104, 118, 122. The viewership data comprises a plurality of counts corresponding to a plurality of time intervals for each program, and each count represents a number of viewers of a respective program during a respective time interval. See, e.g., Page 10, Paragraph 0043; Figure 1, Items 104, 118 122; Figure 3, Item 306. The method further includes processing the viewership data to provide on-screen interface information and transmitting, to a plurality of end-user receivers, the on-screen interface information and data for an electronic program guide. See, e.g., Page 16, Paragraph 0063; Pages 17-18, Paragraphs 0066-0069; Figure 10, Item 1012; Figure 11, Item 1100, 1106. The on-screen interface information is viewable in one or more graphical representations of the plurality of counts displayed along with each respective program entry displayed by the electronic program guide on displays connected to the plurality of end-user receivers. See, e.g., Pages 17-18, Paragraphs 0066-0069; Figure 11, Item 1100, 1106, 1141. Transmitting the on-screen interface information further includes transmitting data representing a growth rate of viewers for a particular program. See, e.g., Pages 17-18, Paragraphs 0066-0069; Page 19, Paragraph 0074; Figure 11, Item 1100, 1106, 1141.

### B. CLAIM 7 - INDEPENDENT

One embodiment of the invention (see, e.g., Claim 7) provides a method for providing viewership information to a plurality of television viewers. The method includes collecting viewership data of a plurality of viewers. See, e.g., Page 2, Paragraph 0006; Page 6, Paragraph 0026; Figure 1, Items 104, 118, 122. The viewership data comprises a plurality of counts corresponding to a plurality of time intervals for each program, and each count represents a number of viewers of a

respective program during a respective time interval, wherein the viewership data is collected from a defined group of the plurality of end-user receivers. *See, e.g.*, Page 10, Paragraph 0043; Page 11, Paragraph 0046; Figure 1, Items 104, 118 122; Figure 3, Item 306. The method also includes processing the viewership data to provide on-screen interface information and transmitting, to a plurality of end-user receivers, the on-screen interface information and data for an electronic program guide. *See, e.g.*, Page 16, Paragraph 0063; Pages 17-18, Paragraphs 0066-0069; Figure 10, Item 1012; Figure 11, Item 1100, 1106. The on-screen interface information is viewable in one or more graphical representations of the plurality of counts displayed along with each respective program entry displayed by the electronic program guide on displays connected to the plurality of end-user receivers. *See, e.g.*, Pages 17-18, Paragraphs 0066-0069; Page 19, Paragraph 0074; Figure 11, Item 1100, 1106, 1141. Transmitting the on-screen interface information includes transmitting group information identifying group members of the defined group. *See, e.g.*, Page 4, Paragraph 0023; Pages 17-18, Paragraphs 0066-0069; Page 19, Paragraph 0074; Figure 11, Item 1100, 1106, 1141.

#### C. CLAIM 24 - INDEPENDENT

One embodiment of the invention (*see, e.g.*, Claim 24) provides a signal processing unit for processing television signals. The unit includes a first connector for receiving a video signal transmitted from a remote provider and a second connector for receiving a viewership signal containing viewership data collected from a plurality of viewers. *See, e.g.*, Page 2, Paragraph 0006; Page 6, Paragraph 0026; Page 8, Paragraph 0036; Figure 1, Items 104, 118, 122; Figure 2, Items 200, 214. The viewership data comprises a plurality of counts corresponding to a plurality of time intervals for each program, and each count represents a number of viewers of a respective program during a respective time interval. *See, e.g.*, Page 10, Paragraph 0043; Figure 1, Items 104, 118 122; Figure 3, Item 306. The unit also includes a memory containing an on-screen guide interface formatable with the viewership data and a processor. Page 8, Paragraph 0035; Page 9, Paragraph 0040; Figure 2, Items 212, 240, 208. The processor is configured to format the on-screen guide interface with



the viewership data. *See, e.g.,* Page 3, Paragraph 0007; Page 9, Paragraph 0040; Page 16, Paragraph 0063; Pages 17-18, Paragraphs 0066-0069; Figure 10, Item 1012; Figure 11, Item 1100, 1106. The viewership data is formatted as one or more graphical representations of the plurality of counts displayed along with each respective program entry displayed with an electronic program guide. *See, e.g.,* Page 16, Paragraph 0063; Pages 17-18, Paragraphs 0066-0069; Figure 10, Item 1012; Figure 11, Item 1100, 1106. The processor is also configured to format an on-screen guide interface with viewership indicators using the viewership data, wherein the viewership indicators indicate a viewership growth rate in at least one program being transmitted in the video signal. *See, e.g.,* Page 16, Paragraph 0063; Pages 17-18, Paragraphs 0066-0069; Page 19, Paragraph 0074; Figure 10, Item 1012; Figure 11, Item 1100, 1106.

#### D. CLAIM 27 - INDEPENDENT

One embodiment of the invention (*see, e.g.,* Claim 27) provides an on-screen program guide information provider system. The system includes a first network connection with a plurality of devices configured to collect viewership data of a plurality of television viewers. *See, e.g.,* Page 2, Paragraph 0006; Page 6, Paragraph 0026; Figure 1, Items 104, 118, 122. The viewership data comprises a plurality of counts corresponding to a plurality of time intervals for each program, and each count represents a number of viewers of a respective program during a respective time interval. *See, e.g.,* Page 10, Paragraph 0043; Figure 1, Items 104, 118 122; Figure 3, Item 306. The system also includes a second network connection with a plurality of end-user receivers and a processor. *See, e.g.,* Pages 6-7, Paragraphs 0028-0030; Figure 1, Items 111, 128, 104, 110. The processor is configured to (i) process the viewership data to provide on-screen guide formatting information and (ii) transmit, via the second network connection, the on-screen guide formatting information to the plurality of end-user receivers. *See, e.g.,* Page 16, Paragraph 0063; Pages 17-18, Paragraphs 0066-0069; Figure 10, Item 1012; Figure 11, Item 1100, 1106. The on-screen guide formatting information is used by the end-user receivers to output viewership indicators to displays connected to the plurality of end-user receivers. *See,*

*e.g.*, Page 7, Paragraph 0032; Pages 17-18, Paragraphs 0066-0069; Figure 2, Item 204; Figure 11, Item 1100, 1106, 1141. Each viewership indicator comprises one or more graphical representations of the plurality of counts displayed along with each respective program entry displayed with an electronic program guide. *See, e.g.*, Pages 17-18, Paragraphs 0066-0069; Figure 11, Item 1100, 1106, 1141. The on-screen guide formatting information comprises a growth rate of viewers for a particular program. *See, e.g.*, Pages 17-18, Paragraphs 0066-0069; Page 19, Paragraph 0074; Figure 11, Item 1100, 1106, 1141.

### **Grounds of Rejection to be Reviewed on Appeal**

1. Claims 3, 7-11, 24 and 27 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Berezowski et al.* (US 20020056087 A1, hereinafter, "*Berezowski*").

## **ARGUMENTS**

### **Rejection of Claims 3, 7-11, 24 and 27 under 35 U.S.C. § 102(e) over *Berezowski et al.***

#### *The Applicable Law*

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

#### *The Examiner's Rejection and Applicants' Arguments*

In this case, *Berezowski* fails to teach each and every element as set forth in the claims. For example, *Berezowski* fails to teach transmitting on-screen guide information including a "growth rate of viewers for a particular program" as recited in claims 3 and 27, or a "viewership indicators indicate a viewership growth rate in at least one program" as recited in claim 24.

With respect to a "growth rate of viewers for a particular program" as recited in claims 3 and 27, the Examiner previously cited *Berezowski* at Paragraphs 0054-0056, 0072, 0073, and Figures 5-6 as teaching the claimed subject matter. See *Office Action dated 3-23-2006*, Pgs. 3-4. In responding to Applicants' arguments that a growth rate is not taught in *Berezowski*, the Examiner submits that both "audience size" and "growth rate of viewers" represent a value or a number of viewers. See *Response to Final Office Action dated 9-15-2006*, Pg. 2. In responding to Applicants arguments that the claimed growth rate is "a value indicative of a change in a number of viewers", the Examiner points out that this language is not recited in the claims. See *id.*

Applicants respectfully submit, however, that an “*audience size*” does not equate to the claimed growth rate and, further, that the language cited above does not need to be in the claim to distinguish from the reference. First, there is no mention in *Berezowski* at all of any type of *growth rate*. See generally, *Berezowski*. Second, Applicants submit that the assertion that an “*audience size*” equates to the claimed “*growth rate*” is without merit. According to the Princeton University dictionary definition, the definition of *growth rate* is: “*the rate of increase in size per unit time*”. See <http://dictionary.reference.com/browse/growth%20rate>. The growth rate recited in the claims refers to the growth rate for an audience (*thus an increase in size per unit time of an audience*). Nowhere in *Berezowski* is there any discussion of (monitoring, generating and/or transmitting) a change in size of an audience. See generally, *Berezowski*.

Accordingly, Applicants submit claims 3, 24 and 27, as well as their dependents, are allowable and respectfully request withdrawal of this rejection.

Regarding claim 7, Applicants submit that *Berezowski* fails to teach *on-screen interface information (that) comprises transmitting group information identifying group members of the defined group* (of end-user receivers from which viewership data is collected). As described in paragraph [0071], group information may identify group members “by name, initials or other descriptors.” While the Examiner refers to portions of *Berezowski* that teach a zip code (as a defined group), citing Figure 16 and Paragraph 0089, the only teachings are that a number of viewers in the zip code watching a particular show may be displayed. However, there is no teaching of any identification of individual members of the group, as recited in the claim.

Accordingly, Applicants submit claim 7, as well as its dependents, are allowable and respectfully request withdrawal of this rejection.

### CONCLUSION

The Examiner errs in finding that claims 3, 7-11, 24 and 27 are unpatentable over *Berezowski et al* under 35 U.S.C. § 102(e).

Withdrawal of the rejections and allowance of all claims is respectfully requested.

Respectfully submitted, and  
**S-signed pursuant to 37 CFR 1.4,**

/Randol W. Read, Reg. No. 43,876/

---

Randol W. Read  
Registration No. 43,876  
Patterson & Sheridan, L.L.P.  
3040 Post Oak Blvd. Suite 1500  
Houston, TX 77056  
Telephone: (713) 623-4844  
Facsimile: (713) 623-4846  
Attorney for Appellant(s)

## CLAIMS APPENDIX

1-2. (Canceled)

3. (Previously Presented) A method for providing viewership information to a plurality of television viewers, comprising:

collecting viewership data of a plurality of viewers, wherein the viewership data comprises a plurality of counts corresponding to a plurality of time intervals for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval;

processing the viewership data to provide on-screen interface information; and  
transmitting, to a plurality of end-user receivers, the on-screen interface information and data for an electronic program guide, wherein the on-screen interface information is viewable in one or more graphical representations of the plurality of counts displayed along with each respective program entry displayed by the electronic program guide on displays connected to the plurality of end-user receivers, wherein transmitting the on-screen interface information further comprises transmitting data representing a growth rate of viewers for a particular program.

4-6. (Canceled)

7. (Previously Presented) A method for providing viewership information to a plurality of television viewers, comprising:

collecting viewership data of a plurality of viewers, wherein the viewership data comprises a plurality of counts corresponding to a plurality of time intervals for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval, wherein the viewership data is collected from a defined group of the plurality of end-user receivers;

processing the viewership data to provide on-screen interface information; and  
transmitting, to a plurality of end-user receivers, the on-screen interface information and data for an electronic program guide, wherein the on-screen interface information is viewable in one or more graphical representations of the plurality of

counts displayed along with each respective program entry displayed by the electronic program guide on displays connected to the plurality of end-user receivers, wherein transmitting the on-screen interface information comprises transmitting group information identifying group members of the defined group.

8. (Previously Presented) The method of claim 7, wherein transmitting the on-screen interface information comprises transmitting group information indicating how many members of the defined group are watching a program.

9. (Previously Presented) The method of claim 7, wherein transmitting the on-screen interface information comprises transmitting group information indicating a group rating for a program.

10. (Previously Presented) The method of claim 7, wherein transmitting the on-screen interface information comprises transmitting group information indicating which members of the defined group are watching a program.

11. (Original) The method of claim 10, wherein the members are identified by:  
extracting member identification information from the viewership data; and  
referencing a database containing group information.

12-23. (Canceled)

24. (Previously Presented) A signal processing unit for processing television signals, comprising:

- a first connector for receiving a video signal transmitted from a remote provider;
- a second connector for receiving a viewership signal containing viewership data collected from a plurality of viewers, wherein the viewership data comprises a plurality of counts corresponding to a plurality of time intervals for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval;

- a memory containing an on-screen guide interface formatable with the viewership data; and



a processor configured to format the on-screen guide interface with the viewership data, wherein the viewership data is formatted as one or more graphical representations of the plurality of counts displayed along with each respective program entry displayed with an electronic program guide, wherein the processor is configured to format an on-screen guide interface with viewership indicators using the viewership data, wherein the viewership indicators indicate a viewership growth rate in at least one program being transmitted in the video signal.

25-26. (Canceled)

27. (Previously Presented) An on-screen program guide information provider system, comprising:

a first network connection with a plurality of devices configured to collect viewership data of a plurality of television viewers, wherein the viewership data comprises a plurality of counts corresponding to a plurality of time intervals for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval;

a second network connection with a plurality of end-user receivers; and  
a processor configured to:

(i) process the viewership data to provide on-screen guide formatting information;

(ii) transmit, via the second network connection, the on-screen guide formatting information to the plurality of end-user receivers, wherein the on-screen guide formatting information is used by the end-user receivers to output viewership indicators to displays connected to the plurality of end-user receivers, wherein each viewership indicator comprise one or more graphical representations of the plurality of counts displayed along with each respective program entry displayed with an electronic program guide, wherein the on-screen guide formatting information comprises a growth rate of viewers for a particular program.

28-47. (Canceled)

## EVIDENCE APPENDIX

None.

## RELATED PROCEEDINGS APPENDIX

None.